IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1535 of 2007

Kannan .. Petitioner

Vs

1. State, rep. by its Secretary
   to Government, Home, Prohibition and
   Excise Department, Fort Saint
   George, Chennai-600 009.

2. The District Magistrate &
   District Collector,
   Tiruchirappalli District @
   Tiruchirappalli. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiar
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, the son-in-law of the detenu by name Subramani @ Subramanian, who was incarcerated at Central Prison, Tiruchirappalli, by order dated 26.9.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention made in Cr.M.P.No.10/2007, to quash the same and to direct the respondents to produce the detenu before this Court and set him at liberty.

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2.1. On 19.8.2007 at about 9.00 hours, during surprise raids conducted by the Inspector of Police, Vaiyampatti Police Station (incharge of Manapparai Police station) along with police party, the detenu was found selling illicit arrack on the river bund of Mamundi river and on seeing the police party, the consumers took to their heels, but the detenu was apprehended and arrested by the police. During interrogation, the detenu admitted his offence and samples of illicit arrack were seized. A case in Crime No.338 of 2007 was registered against the detenu for offences under Sections 4(1)(i) r/w 4(1-A) of the Tamil Nadu Prohibition Act. As per the chemical analysis report, the samples of arrack were found admixed with 3.8 mg% w/v of atropine.

2.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order and public health, after taking into consideration five adverse cases of similar nature, viz., two on the file of same police station Cr.Nos.335/2006 and 175/2007 and three on the file of PEW Musiri at Thuraiyur Cr.Nos.329/2006, 37/2007 and 288/2007, the impugned detention order was clamped on the detenu.

3. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the learned counsel for the petitioner in his representation dated 16.10.2007 that the detenu was taken by the police on 16.8.2007 and not on 19.8.2007, as mentioned in the detention order, was not considered in the rejection order dated 9.11.2007.

4.We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 19.8.2007 with respect to the ground case, in the representation made by the learned counsel for the petitioner dated 16.10.2007, he had specifically stated that he was taken on 16.8.2007 by the Police and was kept under their custody and thereafter, a false case was foisted against him. However, the second respondent, while passing the order of rejection dated 9.11.2007 rejecting the representation of the detenu dated 16.10.2007, had not considered the contention raised by the learned counsel as to the arrest of the detenu.

5.We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the

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order of detention is vitiated and the same is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Home, Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Magistrate &
   District Collector,
   Tiruchirappalli District @
   Tiruchirappalli.

3. The Superintendent
   Central Prison, Tiruchirappalli.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public Law and Order Department,
   Fort St George, Chennai.

RSV (co)
sg 07/01/08

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